

NOT FOR PUBLICATION

MAY 18 2006

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MELVIN ROMERO-VASQUEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-76537

Agency No. A79-043-500

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 15, 2006**

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Melvin Romero-Vasquez, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") decision affirming an

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's order denying Romero-Vasquez's motion to reopen removal proceedings conducted in absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion, *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000), and we deny the petition for review.

The BIA did not abuse its discretion in concluding that Romero-Vasquez's motion to reopen filed with the IJ was untimely. The court mailed the in absentia removal order to Romero-Vasquez's last known address on October 15, 2002, and Romero-Vasquez did not file his motion to reopen until March 2, 2004. *See* 8 U.S.C. § 1229a(b)(5)(C) (requiring a motion to reopen based on exceptional circumstances to be filed within 180 days after the removal order); *Singh-Bhathal v. INS*, 170 F.3d 943, 946 (9th Cir. 1999).

Romero-Vasquez contends that his former attorney failed to inform him of the order of removal. This tolling contention is unpersuasive because Romero-Vasquez was mailed a copy of the order of removal to his last known address, and in addition, Romero-Vasquez does not contend that he did not receive the order. *See Iturribarria v. INS*, 321 F.3d 899, 897-98 (9th Cir. 2003) (equitable tolling applies "when a petitioner is prevented from filing due to deception, fraud, or error, as long as the petitioner acts with diligence in discovering" the misconduct).

Romero-Vasquez's remaining contention lacks merit.

PETITION FOR REVIEW DENIED.